

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BYRON EUGENE JOHNSON,
Petitioner,
v.
D.L. RUNNELS, et al.,
Respondent.

No. 2:04-cv-0253 LKK KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 14, 2015, petitioner filed a motion for a relief from judgment pursuant to Federal Rule of Civil Procedure 60. (ECF No. 80). In this motion, petitioner alleges that this court failed to process his appeal from the judgment entered on March 28, 2011. For the reasons stated herein, the undersigned recommends that petitioner's motion be denied.

Court records indicate that on December 14, 2010, the undersigned recommended that petitioner's application for a petition for writ of habeas corpus be denied. (ECF No. 63.) On March 2, 2011, petitioner filed an appeal to the Ninth Circuit Court of Appeals from the findings and recommendations. (ECF No. 67.) On March 31, 2011, the Clerk of the Court processed this appeal to the Ninth Circuit. (ECF No. 72.)

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1 On March 28, 2011, the Honorable Lawrence K. Karlton adopted the findings and
2 recommendations and judgment was entered. (ECF Nos. 69, 70.) On April 6, 2011, petitioner
3 filed his notice of appeal from the judgment. (ECF No. 76.) The Clerk of the Court for this court
4 processed the appeal from the judgment to the Ninth Circuit. (ECF No. 77.)


5 Because the court docket reflects that the Clerk of the Court processed petitioner's appeal
6 from the judgment, petitioner's motion for relief from judgment should be denied.¹

7 Accordingly, IT IS HEREBY ORDERED that, based on the retirement of the Honorable
8 Lawrence K. Karlton, the Clerk of the Court is directed to reassign this action to a new district
9 judge;

10 IT IS HEREBY RECOMMENDED that petitioner's motion for relief from judgment
11 (ECF No. 80) be denied.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
17 objections shall be filed and served within fourteen days after service of the objections. The
18 parties are advised that failure to file objections within the specified time may waive the right to
19 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: January 22, 2015

21 
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE

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26 ¹ On May 10, 2011, the Ninth Circuit dismissed petitioner's appeal from the findings and
27 recommendations for lack of jurisdiction. (ECF No. 75.) While this court's docket contains no
28 record regarding the Ninth Circuit's resolution of petitioner's appeal from the judgment, this
court recently contacted the Ninth Circuit regarding the appeal from the judgment. All future
inquiries by petitioner regarding this appeal should be made to the Ninth Circuit.